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Attorneys for Plaintiff John P. Anderson, individually
and in his official capacity as a Sheriff of Madera County

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

JOHN P. ANDERSON, in his official capacity as the
Sheriff of Madera County, and individually,

Plaintiff,

v.

JACK DURAN, JR., in his purported official capacity
as Judge of the Picayune Rancheria of the Chukchansi
Indians Tribal Court;

DONNA HOWARD, in her purported official capacity
as Clerk of the Picayune Rancheria of the Chukchansi
Indians Tribal Court;

THE PICAYUNE RANCHERIA OF THE
CHUKCHANSI INDIANS, a federally recognized
Indian Tribe;

CHUKCHANSI ECONOMIC DEVELOPMENT
AUTHORITY, a wholly owned unincorporated entity
of the Picayune Rancheria of the Chukchansi Indians;
CHUKCHANSI INDIAN HOUSING AUTHORITY,
a wholly owned unincorporated entity of the Picayune
Rancheria of the Chukchansi Indians;

CASE NO. 3:13-cv-04825-RS

[Action filed: 10-17-13

Case Assigned to: Hon. Richard Seeborg
Courtroom 3]

**[PROPOSED]
ORDER GRANTING APPLICATION
FOR TEMPORARY RESTRAINING
ORDER AND ORDER TO SHOW
CAUSE WHY A PRELIMINARY
INJUNCTION SHOULD NOT ISSUE**

Date: November 8, 2013

Time: 10:00 a.m.

Dept: Courtroom 3

Slovak Baron Empey Murphy & Pinkney LLP
1800 East Tahquitz Canyon Way
Palm Springs, CA 92262

1 REGGIE LEWIS, in his purported official capacities)
as chairman of the Picayune Rancheria of the)
2 Chukchansi Indians; a representative of the)
Chukchansi Economic Development Authority; and a)
3 representative of the Chukchansi Indian Housing)
Authority;)
4 CHANCE ALBERTA, in his purported official)
capacities as vice chairman of the Picayune Rancheria)
5 of the Chukchansi Indians; a representative of the)
6 Chukchansi Economic Development Authority; and a)
7 representative of the Chukchansi Indian Housing)
Authority;)
8 CARL BUSHMAN, in his purported official capacities)
as a council member of the Picayune Rancheria of the)
9 Chukchansi Indians; a representative of the)
10 Chukchansi Economic Development Authority; and a)
11 representative of the Chukchansi Indian Housing)
Authority;)
12 IRENE WALTZ, in her purported official capacities as)
a council member of the Picayune Rancheria of the)
13 Chukchansi Indians; a representative of the)
14 Chukchansi Economic Development Authority; and a)
15 representative of the Chukchansi Indian Housing)
Authority;)
16 LYNN CHENOT, in her purported official capacities)
as a council member of the Picayune Rancheria of the)
17 Chukchansi Indians; a representative of the)
18 Chukchansi Economic Development Authority; and a)
19 representative of the Chukchansi Indian Housing)
Authority;)
20 DAVID CASTILLO, in his purported official)
capacities as a council member of the Picayune)
21 Rancheria of the Chukchansi Indians; a representative)
22 of the Chukchansi Economic Development Authority;)
and a representative of the Chukchansi Indian Housing)
23 Authority; and)
24 MELVIN ESPE, in his purported official capacities as)
a council member of the Picayune Rancheria of the)
25 Chukchansi Indians, a representative of the)
26 Chukchansi Economic Development Authority; and a)
27 representative of the Chukchansi Indian Housing)
Authority.)

Defendants.)

1 The application of Plaintiff John P. Anderson (“Plaintiff” or “Sheriff”) for a temporary
 2 restraining order and order to show cause why a preliminary injunction should not issue came
 3 before this Court for consideration on October 17, 2013.¹ Thomas S. Slovak of Slovak Baron
 4 Empey Murphy & Pinkney LLP, appeared on behalf of Plaintiff and moving party, John P.
 5 Anderson, in his official capacity as the Sheriff of Madera County and individually. Alex Lozada of
 6 Rosette LLP specially appeared on behalf of Defendants The Picayune Rancheria of the
 7 Chukchansi Indians (“Tribe”), Chukchansi Economic Development Authority (“CEDA”) and
 8 Chukchansi Indian Housing Authority (“CIHA”) and all of the individually named Defendants,
 9 collectively referred to as the “Lewis Faction”, other than Defendants Duran and Howard. Lestor
 10 Marston of Rapport & Marston specially appeared on behalf of the Tribe and CEDA representing
 11 that his clients known as the Ayala Faction were the duly authorized Tribal Council and not the
 12 Lewis Faction. Attorney Marston also stated his special appearance on behalf of David Rapport
 13 representing Attorney Rapport to be counsel for CIHA. Melanie Daniel was conditionally admitted
 14 pro hac vice as co-counsel with Attorney Marston, on the condition that Attorney Marston later
 15 provide the court with a Certificate of Good Standing for Ms. Daniel, specially appearing and
 16 representing the same parties as Attorney Marston.

17 Oral notice and a copy of all pleadings having been provided to all appearing counsel and to
 18 counsel for the Reid Faction, (another group of Tribal members claiming to be the authorized
 19 representatives of the Tribe, CEDA and CIHA) and with proof of service of same also having been
 20 provided to non-appearing Defendants Duran and Howard, and upon consideration, and for good
 21 cause shown, IT IS HEREBY ORDERED that the TEMPORARY RESTRAINING ORDER
 22 application is GRANTED on the terms and conditions set forth below:

23 The Court may issue a temporary restraining order (“TRO”) pursuant to Federal Rule of
 24 Civil Procedure 65. The standard for issuing a TRO is “substantially identical” to the standard for
 25 issuing a preliminary injunction. *Stuhlbarg Int’l Sales Co. F. John D. Brush & Co. 240 F. 3d 832,*
 26 *839 n.7 (9th Cir. 2001)* Thus, in order to obtain a TRO, a plaintiff must show: (1) likelihood of
 27 success on the merits; (2) likelihood of irreparable harm in the absence of preliminary relief; (3) that

28 ¹ The hearing was recorded by a court reporter

1 the balance of the equities tips in her favor; and (4) that an injunction is in the public interest.
 2 *Winter v. Nat. Res. Def. Council, Inc.* 555 U.S. 7, 20, (2008) Alternatively, an injunction may issue
 3 under the “sliding scale” approach if there are serious questions going to the merits and the balance
 4 of hardships tips sharply in plaintiff’s favor, so long as plaintiff still shows a likelihood of
 5 irreparable injury and that an injunction is in the public interest. *Alliance for the Wild Rockies v.*
 6 *Coltrell*, 632 F.3d 1127, 1134-35 (9th Cir. 2011). “Serious questions are those which cannot be
 7 resolved one way or the other at the hearing on the injunction.” *Bernhardt v. Los Angeles Cnty.*,
 8 *339 F.3d 920, 926-927 (9th Cir. 1988)*. They “need not promise a certainty of success, nor even
 9 present a probability of success, but must involve a ‘fair chance of success on the merits.’” *Marcos*,
 10 *F.2d at 1362*.

11 “An injunction is a matter of equitable discretion and is an extraordinary remedy that may
 12 only be awarded upon a clear showing that the plaintiff is entitled to such relief.” *Earth Island Inst.*
 13 *V. Carlton*, 626 F.3d. 462, 469 (9th Cir.2010) (internal quotation marks omitted).

14 In support of this Order, the Court makes the following findings based on the evidence
 15 submitted by Plaintiff, including Plaintiff’s Verified Complaint, supporting declarations and matters
 16 subject to judicial notice.

17 Currently, three groups known as Factions (Lewis, Ayala and Reid) from the Tribe claim
 18 to be the Tribe’s sole authorized tribal council or governing body of the Tribe, CEDA and CIHA.

19 In the midst of this internal governance dispute, both the Lewis Faction and the Ayala
 20 Faction have established tribal courts and appointed attorneys to serve as their “judges”

21 Defendant Duran in his capacity as appointed judge of a tribal court established by the
 22 Lewis Faction has issued a temporary restraining order restraining the Sheriff from aiding and
 23 abetting illegal activities as against the Tribe and its members; restraining the Sheriff from
 24 participating, coordinating, facilitating, negotiating, colluding, conspiring, or dealing with the
 25 Ayala Faction when those actions would be in violation of Tribal law; and restraining the Sheriff
 26 from contravening the Lewis Council’s rightful authority through his use of pepper spray or
 27 threats of arrest against the Tribe’s security, or preventing the Lewis Council’s access to its
 28 government complex, as he had done in the past. The Tribal Court also has issued a ruling

1 requiring the Sheriff to file responsive pleadings to the lawsuit filed by the Tribe, CEDA and
 2 CIHA as directed by the Lewis Faction. Plaintiff's motion to dismiss for lack of jurisdiction
 3 having been denied by Defendant Duran, Plaintiff seeks relief from all orders of Defendant Duran
 4 and any obligation to proceed further before him or any other tribal court claiming such entities
 5 have no jurisdiction over him. To allow this Court to hear full briefing on this issue by all
 6 concerned parties, and irreparable harm being present should an injunction this temporary relief
 7 not be provided given the evidence before this Court, this Order follows:

8 1. This Court by reason of the matters at issue, has jurisdiction pursuant to 28 USC
 9 §1331 as Plaintiff's Verified Complaint raises substantial Federal questions and violations of
 10 Federal Statutes and Constitutional rights being at issue.

11 2. The TRO issued by Defendant Duran poses an imminent threat to Plaintiff's
 12 discharge of his official duties.

13 Plaintiff has no adequate remedy at law.

14 THE COURT FINDS that no bond is necessary.

15 Accordingly, IT IS HEREBY ORDERED that, pending an order by this Court as to
 16 whether a preliminary injunction should issue, Defendants, their officers, agents, servants,
 17 employees, and attorneys, and all persons acting by, through, under, or in concert with Defendants
 18 (referred to collectively hereinafter as "Defendants") are enjoined from proceeding with the action
 19 currently pending before Defendant Duran and filed by the Lewis Faction against the Sheriff,
 20 individually and in his official capacity as the Madera County Sheriff. Defendants shall not order,
 21 issue, enforce or attempt to enforce any order, judgment, ruling or decree of any kind against
 22 Plaintiff or his employees, officers, officials, elected or appointed board members, agents or
 23 attorneys. The temporary restraining Order of August 6, 2013, issued by Defendant Duran is
 24 stayed and without further force and effect and Plaintiff is relieved from any obligation to file
 25 responsive pleadings before the Lewis Faction Tribunal, Defendant Duran, Judge Presiding, and
 26 no action against Plaintiff may be taken as a result thereof pending further order of this Court.
 27 Defendants are required to advise all agents or persons under their control of the terms of this
 28 Order.

1 Defendants, and each of them, shall be entitled to raise all issues objecting to the relief
 2 sought by Plaintiff as the issuance of this Order is made without prejudice to any future rulings by
 3 this Court after a hearing as ordered below.

4 IT IS FURTHER ORDERED that Plaintiff's papers filed in support of his application for a
 5 temporary restraining order and a Supplemental Brief on the Issue of Venue, to be filed by
 6 Plaintiff no later than 5:00 p.m. on Monday, October 21, 2013 together shall be treated as
 7 Plaintiff's moving papers for a preliminary injunction. By stipulation of the parties and upon good
 8 cause existing therefore, Defendants' Opposition Briefs are due October 25, 2013. Plaintiff's
 9 Reply Brief is due November 1, 2013. The hearing on Plaintiff's Request for a Preliminary
 10 Injunction is set for November 8, 2013, at 10:00 a.m. All counsel for all Defendants or interested
 11 parties desiring to appear at the hearing on November 8, 2013, must appear in person and may not
 12 appear telephonically.

13 IT IS SO ORDERED.

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 15 Dated: _____

 16 Honorable Richard Seeborg
 17 United States District Court Judge
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Slovak Baron Empey Murphy & Pinkney LLP
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that this document has been filed electronically on this 18th day of October , 2013, and is available for viewing and downloading to the ECF registered counsel of record, if any, and has also been served by email and mail as listed below.

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Donna Howard, Court Clerk
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DATED this 15th day of October, 2013.

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